

REGULATION ON STATE AID FOR ENVIRONMENTAL PROTECTION

Pursuant to Article 22 (1) of the State aid Law no.143/1999, the Competition Council adopts the present Regulation.

Introduction

Drafting a legal framework regulating the state aid discipline stands for the continuation of the harmonization process of the Romanian legislation with the European legislation, which is part of Romania's accession process to the European Union.

The purpose of the state aid control exerted by the public authorities or any other bodies administering resources on behalf of the state aims at assessing the compatibility of a state aid with a normal competitive environment within a market economy where the supply and demand determine the prices of the goods and services.

Any intention to grant a new state aid or to alter an existing aid must be notified to the Competition Council.

According to the provisions of State aid Law no.143/1999, The Competition Council may authorise environmental state aid, provided that the „polluter pays” principle is observed.

Environmental policy objectives must be integrated into the state aid policy in the environmental sector, in particular with a view to promoting sustainable development. Accordingly, the competition policy and the environmental policy are not mutually antagonistic, but the requirements of environmental protection need to be integrated into the definition and implementation of competition policy, in particular so as to promote sustainable development.

However, taking long-term environmental requirements into account does not mean that all aid must be authorised. Consideration has to be given to the effects the aid may have in terms of sustainable development and full application of the "polluter pays" principle. Some forms of aid certainly do satisfy these tests, particularly where they make it possible to achieve a high level of environmental protection while avoiding any conflict with the principle of the internalisation of costs. But other forms of aid, as well as having adverse effects on competition, may run counter to the "polluter pays" principle and may hinder the establishment of a process of sustainable development. This might be the case, for example, where aid is designed merely to facilitate compliance with new mandatory standards.

The Competition Council's approach in this Regulation therefore aims at determining whether and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth.

Chapter I

General provisions

Definitions

Art.1. For the purpose of this Regulation, the concepts and principles are defined as follows:

- a) *The concept of environmental protection*: any action designed to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.
- b) *The concept of the internalisation of costs*: the principle that all costs associated with the protection of the environment should be included in firms' production costs.
- c) *The "polluter pays" principle*: the principle that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution.
- d) *Polluter*: a polluter is someone who directly or indirectly damages the environment or who creates conditions leading to such damage.
- e) *Prices to reflect costs*: this principle states that the prices of goods or services should incorporate the external costs associated with the negative impact on the environment of their production and marketing.
- f) *Environmental standards*: mandatory standards setting the levels to be attained in environmental terms and the obligation under the law to use the best available techniques which do not entail excessive costs.
- g) *Renewable energy sources*: renewable non-fossil energy sources, viz. wind energy, solar energy, geothermal energy, wave energy, tidal energy, hydroelectric installations with a capacity below 10 MW and biomass, where biomass is defined as products from agriculture and forestry, vegetable waste from agriculture, forestry and the food production industry, and untreated wood waste and cork waste.
- h) *Electric power generated from renewable energy sources*: electric power generated by plant using only renewable energy sources, and that share of electric power generated from renewable energy sources in hybrid plant using traditional energy sources, in particular for contingency purposes.
- i) *Environmental tax*: One likely feature for a levy to be considered as environmental would be that the taxable base of the levy has a clear negative effect on the environment. However, a levy could also be regarded as environmental if it has a less clear, but nevertheless discernible positive environmental effect. In general, it is up to the relevant authorities to show the estimated environmental effect of the levy.
- j) *Energy-saving measures*: actions which enable companies to reduce the amount of energy used in their production cycle.

Scope

Art.2. – (1) This Regulation applies to aid to protect the environment in all sectors, except of excluding the agriculture sector. This Regulation applies to fisheries and aquaculture. State aid for research and development in the environmental field is subject to the rules set out in the Regulation on State aid for research and development of the Competition Council. Similarly, the characteristics of aid for environmental training activities do not justify such

aid being treated separately, and it will therefore be examined in accordance with the provisions of the Regulation on training aid of the Competition Council.

(2) Energy-saving measures and the use of renewable sources of energy are actions to protect the environment. The design and manufacture of machines or means of transport which can be operated with fewer natural resources are not covered by this Regulation. Action taken within plants or other production units with a view to improving safety or hygiene is important and may be eligible for certain types of aid, but it is not covered by this Regulation.

Chapter II

State aid policy and environmental policy

The principles of granting State aids for environmental protection in order to promote a sustainable development

Art.3. – (1) The damages to the environment have costs to society as a whole and, conversely, that environmental action can generate benefits in the form of economic growth, employment and competitiveness and that the effective application of the 'polluter pays' principle and the full internalisation of environmental costs onto polluters remains the main way of achieving them.

(2) The Competition Council's approach on environmental State aid control needs to satisfy a double imperative:

(a) to ensure the competitive functioning of market and increased competitiveness in firms;
(b) to ensure that the requirements of environmental protection are integrated into the definition and implementation of competition policy, in particular in order to promote sustainable development. Internalisation of costs is a priority objective that can be achieved in various ways, including by way of instruments based on market laws or those based on a regulatory approach, these being the most effective tools for achieving the objectives described above.

(3) Cost internalisation helps to ensure that prices accurately reflect costs in so far as economic operators allocate their financial resources on the basis of the prices of the goods and services they wish to buy. By default of the accurately price it is more difficult to raise public awareness and promote overexploitation of natural resources.

(4) Ensuring that prices reflect costs at all stages of the economic process is the best way of making all parties aware of the cost of protecting the environment. Apart from its potentially adverse effects on trade and competition, State aid generally undermines that aim because it enables certain firms to reduce costs artificially and not to reveal the costs of environmental protection to consumers. In the long term, therefore, some forms of State aid run counter to the objectives of sustainable development.

(5) The "polluter pays" principle and the need for firms to internalise the costs associated with protecting the environment would appear to militate against the granting of State aid.

(6) Nevertheless, the State aid can be justified in two instances:

(a) in certain specific circumstances in which it is not yet possible for all costs to be internalised by firms and the aid can therefore represent a temporary second-best solution by encouraging firms to adapt to standards;

(b) the aid may also act as an incentive to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants.

(7) The granting of environmental aid should no longer be used to make up for the absence of cost internalisation. If environmental requirements are to be taken into account in the long term, prices must accurately reflect costs and environmental protection costs must be fully internalised. Consequently, the aid is not justified in the case of investments designed merely to bring companies into line with new or existing technical standards in force, excepting the justified cases and only as a temporary second-best solution.

(8) In order to address the special difficulties encountered by Small and Medium Enterprises (SMEs), it should be possible to grant them aid for adapting to new standards for a period of three years from the adoption of such standards.

(9) Aid may though be useful where it serves as an incentives to achieve levels of protection which are higher than those required by mandatory standards.

(10) However, it has not been shown that aid has an incentive effect of this kind where it is designed merely to help firms to comply with existing or new national technical standards. Such standards constitute the ordinary law with which firms must comply, and it is not necessary to provide them with aid in order to encourage them to obey the law.

Specific case of the energy sector and tax reductions

Art.4. – (1) Certain relevant authorities may consider adopting taxes the effects of which are conducive to environmental protection. In some cases, exemptions from or reductions in taxes are granted to firms in particular categories in order to avoid placing them in a difficult competitive situation. Such measures may constitute State aid within the meaning of the provisions of the State aid Law no. 143/1999. However, the adverse effects of such aid can be offset by the positive effects of adopting taxes. Accordingly, if such exemptions are necessary to ensure the adoption or continued application of taxes applicable to all products, they are acceptable, subject to certain conditions and for a limited period of time. This period may last for 10 years if the conditions are met. Thereafter, the relevant authorities will remain free to renotify the measures in question to the Competition Council, which could adopt the same approach in its analysis while taking into consideration the positive results obtained in environmental terms.

(2) The qualified authorities have to promote the use of renewable sources of energy and combined heat and energy production, due the major advantages for the environment. Consequently, where measures to promote renewable sources of energy and the combined production of electric power and heat constitute State aid, they are acceptable subject to certain conditions. It must be certain, however, that such aid is not in breach of other provisions of the . Law no. 143/1999 on State Aid, with the subsequent amendments and completions, or from the regulations issued for its enforcement”.

Chapter III

General conditions for authorising environmental State aid

Investment aid

Art.5. – (1) For a period of three years from the adoption of new compulsory standards, investment aid to help SMEs meet new standards may be authorised up to a maximum of 15 % gross of eligible costs, as defined in Article 6.

(2) Investment aid enabling firms to improve on the standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs. These conditions also apply to aid where firms undertake investment in the absence of mandatory standards.

(3) Investments in energy saving, as defined in Article 1, are deemed equivalent to investments to promote environmental protection. Such investments play a major role in achieving economically the national objectives for the environment. They are, therefore, eligible for investment aid at the basic rate of 40 % of eligible costs.

(4) Investments in the combined production of electric power and heat may also qualify under this Regulation if it can be shown that the measures beneficial in terms of the protection of the environment because the conversion efficiency is particularly high, because the measures will allow energy consumption to be reduced or because the production process will be less damaging to the environment. In this connection, the Competition Council will take into particular consideration the type of primary energy used in the production process. It should also be borne in mind that increased energy use from combined production of heat and power is a national priority for the environment. Such investment may, therefore, be given aid at the basic rate of 40 % of eligible costs.

(5) Investments to promote renewable sources of energy are deemed equivalent to environmental investments undertaken in the absence of mandatory national standards. It should also be borne in mind that measures in support of renewable sources of energy are one of the long-term objectives that should be encouraged most. The rate of aid for investment in support of these forms of energy is therefore 40 % of eligible costs.

(6) In case of renewable energy installations serving all the needs of an entire community the investments made in this connection may qualify for a bonus of 10 % on top of the basic rate of 40 % of eligible costs.

(7) Where it can be shown to be necessary, the granting authorities will be able to grant investment aid to support renewable energy up to 100 % of eligible costs. The installations concerned will not be entitled to receive any further support.

(8) In the regions eligible for regional aid, firms may receive aid to promote regional development. To encourage them to invest further in the environment, it should be possible, where appropriate, to provide additional aid towards any environmental investment carried out in accordance with paragraph (2).

(9) The maximum rate of environmental aid applicable to eligible costs is the higher of the following two options:

(a) either the basic rate for environmental investment aid, i.e. 30% gross (standard system), 40% gross (investments in energy saving, in renewable sources of energy or to promote the combined production of electric power and heat) or 50 % gross (investments in renewable sources of energy that supply an entire community) raised by 10% gross for assisted areas¹. Investments are eligible for investment aid if the conditions of the Regulation on regional aid and SMEs aid of the Competition Council are met.

(b) or the regional aid rate plus 10% points gross.

(10) Where investments of the kind referred to in paragraph (2) and (3) are carried out by SMEs, an increase of 10% gross may be authorised.

(11) The bonuses for assisted regions and SMEs may be combined, but the maximum rate of environmental aid may never exceed 100 % gross of the eligible costs. SMEs do not qualify for a double bonus either under the provisions applicable to regional aid or under those applicable in the environmental field.

(12) The investments which the paragraphs (2) and (3) refer to are investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

(13) Spending on technology transfer through the acquisition of operating licences or of patented and non-patented know-how may also qualify for environmental aid. But any such intangible asset must satisfy the following tests:

(a) it must be regarded as a depreciable asset;

¹ Decision no.2/2000 of the Romania – European Union Association Council provides for an extension with five years, starting 1998, of the period within which any public aid granted by Romania will be assessed taking into account the fact that Romania is to be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community. Pursuant to Article 64 of the Europe Agreement establishing an Association between the European Communities and their Member States, on the one part, and Romania, on the other part, the Association Council shall, taking into account the economic situation of Romania, decide whether this period should be extended for a further period of five years.

- (b) it must be purchased on market terms, from a firm in which the acquirer has no power of direct or indirect control;
- (c) it must be included in the assets of the firm, and remain in the establishment of the recipient of the aid and be used there for at least five years. This condition does not apply if these intangible assets are technically out of date. If it is sold during those five years, the yield from the sale must be deducted from the eligible costs and all or part of the amount of aid must, where appropriate, be reimbursed.

Eligible costs

Art.6. – (1) Eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives.

This has the following consequences: where the cost of investment in environmental protection cannot be easily identified in the total cost, the Competition Council will take account of objective and transparent methods of calculation, e.g. the cost of a technically comparable investment that does not though provide the same degree of environmental protection.

(2) In all cases, eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. If the investments are concerned solely with environmental protection without any other economic benefits, no additional reduction will be applied in determining the eligible costs.

(3) For renewable energy, eligible investment costs are normally the extra costs borne by the firm compared with a conventional power plant with the same capacity in terms of the effective production of energy.

(4) Where SMEs adapt to new standards, eligible costs include additional investments needed to attain the level of environmental protection required by those standards.

(5) Where the firm undertakes a voluntary improvement on mandatory standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by these standards. The cost of investments needed to reach the level of protection required by the mandatory standards is not eligible.

(6) Where no standards exist, eligible costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the firm or firms in question would achieve in the absence of any environmental aid.

Rehabilitation of polluted industrial sites

Art.7. – (1) Interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites may come within the scope of this Regulation. The environmental damage concerned may be damage to the quality of the soil or of surface water or groundwater. All expenditure incurred by a firm in rehabilitating its site, whether or not such

expenditure can be shown as a fixed asset on its balance sheet, ranks as eligible investment in the case of the rehabilitation of polluted sites.

(2) Where the person responsible for the pollution is clearly identified, that person must finance the rehabilitation in accordance with the "polluter pays" principle, and no State aid may be given.

(3) Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the work may receive aid.

(4) Aid for the rehabilitation of polluted industrial sites may amount to up to 100 % of the eligible costs, plus 15 % of the cost of the work. The eligible costs are equal to the cost of the work less the increase in the value of the land.

(5) The total amount of aid may under no circumstances exceed the actual expenditure incurred by the firm.

Relocation of firms

Art.8. – (1) As a rule, the relocation of firms to new sites does not constitute environmental protection and does not therefore give entitlement to aid under this Regulation.

(2) The granting of aid may, however, be justified when a firm established in an urban area or in an area lawfully carries on an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable area.

(3) All the following criteria must be satisfied at the same time:

(a) The change of location must be dictated on environmental protection grounds and must have been ordered by administrative or judicial decision.

(b) The firm must comply with the strictest environmental standards applicable in the new region where it is located.

(4) A firm satisfying the conditions from paragraph (3) may receive investment aid in accordance with Article 5 (2). The provisions of Article 5 (10) concerning the granting of a bonus for SMEs will apply.

(5) In order to determine the amount of eligible costs in the case of relocation aid, will take into account the yield from the sale or renting of the plant or land abandoned, the compensation paid in the event of expropriation and the costs connected with the purchase of land or the construction or purchase of new plant of the same capacity as the plant abandoned. Account may also be taken of any other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant. Investments relating to any capacity increase may not be taken into consideration in calculating the eligible costs conferring entitlement to the granting of environmental aid.

(6) If the administrative or judicial decision ordering the change of location results in the early termination of a contract for the renting of land or buildings, any penalties imposed on the firm for having terminated the contract may be taken into consideration in calculating the eligible costs.

Aid to SMEs for advisory/consultancy services in the environmental field

Art.9. The advisory/consultancy services play an important part in helping SMEs to make progress in environmental protection and therefore aid may be granted under the provisions of the Regulation on regional aid and SMEs aid of the Competition Council.

Chapter IV Operating aid

Common rules applicable to operating aid for the management of waste and aid in the energy-saving field

Art.10. - (1) The following rules apply to two types of operating aid, namely:

(a) aid for the management of waste where such management is in line with the hierarchical classification of the principles of waste management according to which the concept of waste treatment must be looked at from three angles: re-utilisation, recycling and recovery and waste whose production is unavoidable must be treated and eliminated without danger;

(b) aid in the energy-saving field.

(2) Where such aid is shown to be absolutely necessary, it should be strictly limited to compensating for extra production costs by comparison with the market prices of the relevant products or services. Such aid must also be temporary and, as a general rule, must be wound down over time, so as to provide an incentive for prices to reflect costs reasonably rapidly.

(3) The firms should normally bear the costs of treating industrial waste in accordance with the "polluter pays" principle. Firms receiving operating aid towards the treatment of industrial or non-industrial waste must finance the service provided in proportion to the amount of waste they produce and/or the cost of treatment.

(4) All such operating aid is subject to a limited duration of five years where the aid is "degressive". Its intensity may amount to 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year.

(5) In the case of "non-degressive" aid, its duration is limited to five years and its intensity must not exceed 50 % of the extra costs.

Rules applicable to all operating aid in the form of tax reductions or exemptions

Art.11. – (1) When adopting taxes that are to be levied on certain activities for reasons of environmental protection, the responsible authorities may deem it necessary to make provision for temporary exemptions for certain firms. In general, such exemptions constitute operating aid under the State aid Law no.143/1999. In analysing these measures, it has to be ascertained among other things whether the tax is to be levied as the result of a national decision or an autonomous decision on the part of a responsible authority.

(2) If the tax is to be levied as the result of an autonomous decision on the part of a responsible authority, the firms affected may have some difficulty in adapting rapidly to the new tax burden. In such circumstances there may be justification for a temporary exemption enabling certain firms to adapt to the new situation.

(3) If the tax is to be levied as the result of a national reglementation, there are two possible scenarios:

- (a) a responsible authority applies tax to certain products at a rate higher than the minimum rate laid down in the national regulation and grants an exemption to certain firms, which, as a result, pay tax at a rate which is lower but nevertheless at least equal to the minimum rate set by the regulation. In those circumstances, a temporary exemption may be justified to enable firms to adapt to higher taxation and to provide them with an incentive to act in a more environmentally friendly manner;
- (b) a responsible authority applies tax to certain products at the minimum rate laid down in the national regulation and grants an exemption to certain firms, which are thus subject to taxation at a rate below the minimum rate. If such an exemption is not authorised by the regulation in question, it will constitute aid which is incompatible with the State aid Law no.143/1999. If it is authorised by the regulation, the Competition Council may take the view that it is compatible with the provisions of the State aid Law no. 143/1999 in so far as it is necessary and is not disproportionate in the light of the national objectives pursued. The Competition Council will be specially concerned to ensure that any such exemption is strictly limited in time.

(4) In general, the tax measures in question should make a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objectives pursued.

(5) These exemptions can constitute operating aid which may be authorised on the following conditions:

- I. When, for environmental reasons, a responsible authority introduces *a new tax* in a sector of activity or on products in respect of which no national tax has been carried out or when the tax envisaged by the responsible authority exceeds that laid down by national legislation, the Competition Council takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:

- a) these exemptions are conditional on the conclusion of agreements between the concerned responsible authority and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each responsible authority and will be assessed by the Competition Council when the aid projects are notified to it. The responsible authorities must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between a relevant authority and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met. These provisions also apply where a responsible authority makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;
- b) these exemptions need not be conditional on the conclusion of agreements between the responsible authority concerned and the recipient firms if the following alternative conditions are satisfied: there the reduction concerns a national tax, the amount effectively paid by the firms after the reduction must remain higher than the national minimum in order to provide the firms with an incentive to improve environmental protection; there the reduction concerns a domestic tax imposed in the absence of a national tax, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.

II. The provisions in point I may be applied to *existing taxes* if the following two conditions are satisfied at the same time:

- a) the tax in question must have an appreciable positive impact in terms of environmental protection;
- b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.

(6) The responsible authority may also encourage the development of processes for producing electric power from conventional energy sources such as gas that have an energy efficiency very much higher than the energy efficiency obtained with conventional production processes. In such cases, given the importance of such techniques for environmental protection and provided that the primary energy used reduces significantly the negative effects in terms of environmental protection, total exemptions from taxes may be justified for a period of five years where aid is non-degressive. Derogations for 10 years may also be granted in accordance with the conditions set out in paragraph (5) points I and II.

(7) Where an existing tax is increased significantly and where the responsible authority concerned takes the view that derogations are needed for certain firms, the conditions set out in paragraph (5) point I as regards new taxes are applicable by analogy.

(8) When the reductions concern a tax that has not been harmonised at national level and when the local tax is lower than or equal to the national minimum, long-term exemptions are not justified. In this case, any exemptions granted must satisfy the conditions laid down in Article 10 (4) and (5) and must, in any event, be covered by an express authorisation to derogate from the national minimum.

In all cases of reduction of tax, the relevant authority may grant operating aid in accordance with Article 10 (4) and (5).

Rules applicable to operating aid for renewable energy sources

Art.12. – (1) As regards the production of renewable energy, operating aid will usually be allowable under this Regulation.

(2) Such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources. It must also be borne in mind to encourage the development of these sources of energy, notably on environmental grounds. Aid may be necessary in particular where the technical processes available do not allow energy to be produced at unit costs comparable to those of conventional sources.

(3) Operating aid may be justified here in order to cover the difference between the cost of producing energy from renewable energy sources and the market price of that energy. The form of such aid may vary depending on the kind of energy involved and the support mechanism worked out. Moreover, when studying cases, the Competition Council will take account of the competitive position of each form of energy involved.

(4) State aid may be granted for renewable energy sources as follows:

- I. a) In the renewable energy field, unit investment costs are particularly high and generally account for a significant proportion of firms' costs and do not allow firms to charge competitive prices on the markets where they sell energy. In order to take better account of this market-access barrier for renewable energies, State aid may be granted to compensate for the difference between the production cost of renewable energy and the market price of the form of power concerned. Any operating aid may then be granted only for plant depreciation. Any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a fair return on capital if it is shown that this is indispensable given the poor competitiveness of certain renewable energy sources. In determining the amount of operating aid, account should also be taken of any investment aid granted to the firm in question in respect of the new plant. When notifying aid schemes to the Competition Council, the granting authorities must state the precise support mechanisms and in particular the methods of calculating the amount of aid. If the

Competition Council authorises the scheme, the granting authorities must then apply those mechanisms and methods of calculation when it comes to granting aid to firms.

- b) Unlike most other renewable sources of energy, biomass requires relatively less investment but brings higher operating costs. The Competition Council will, therefore, be amenable to operating aid exceeding the amount of investment where it may be shown that the aggregate costs borne by the firms after plant depreciation are still higher than the market prices of the energy.

II. Support may be granted for renewable energy sources by using market mechanisms such as green certificates or tenders. These systems allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above the market price for conventional power. The price of these green certificates is not fixed in advance but depends on supply and demand. Where they constitute State aid, these systems may be authorised by the Competition Council if the granting authorities can show that support is essential to ensure the viability of the renewable energy sources concerned, does not in the aggregate result in overcompensation for renewable energy and does not dissuade renewable energy producers from becoming more competitive. With a view to verifying that these criteria are met, the Competition Council intends to authorise these aid systems for a period of ten years, after which it will have to be assessed whether the support measure needs to be continued.

III. Operating aid may be granted to new plants producing renewable energy that will be calculated on the basis of the external costs avoided. These are the environmental costs that society would have to bear if the same quantity of energy were produced by a production plant operating with conventional forms of energy. They will be calculated on the basis of the difference between, on the one hand, the external costs produced and not paid by renewable energy producers and, on the other hand, the external costs produced and not paid by non-renewable energy producers. To carry out these calculations, the granting authorities will have to use a method of calculation that is internationally recognised and has been communicated to the Competition Council. It will have to provide among other things a reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs not covered. At any event, the amount of the aid thus granted to the renewable energy producer must not exceed the equivalent in ROL of 0,05 Euro per kWh. Furthermore, the amount of aid granted to producers that exceeds the amount of aid resulting from Option I must be reinvested by the firms in renewable sources of energy. The Competition Council will take into account if this activity also qualifies for State aid.

If Option III is to remain consistent with the general rules on competition, the Competition Council must be certain that the aid does not give rise to any distortion of competition on the market. In other words, it must be certain that the aid will result in an actual overall increase in the use of renewable energy sources at the

expense of conventional energy sources, and not in a simple transfer of market shares between renewable energy sources. The following conditions will therefore have to be met:

- a) aid granted under this option must form part of a scheme which treats firms in the renewable energy sector on an equal footing;
- b) the scheme must provide for aid to be granted without discrimination as between firms producing the same renewable energy;
- c) the scheme must be re-examined by the Competition Council every five years.

IV. Responsible authorities may still grant operating aid in accordance with the general rules governing such aid in Article 10 (4) and (5).

Rules applicable to operating aid for the combined production of electric power and heat

Art.13. – (1) Operating aid for the combined production of electric power and heat may be justified provided that the conditions set out in Article 5 (4) are met. Such aid may be granted to firms distributing electric power and heat to the public where the costs of producing such electric power or heat exceed its market price. In similar circumstances, operating aid may be granted in accordance with the rules stipulated in Article 12 (4). The decision as to whether the aid is essential will take account of the costs and revenue resulting from the production and sale of the electric power or heat.

(2) Operating aid may be granted on the same conditions as for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy. The production cost may include the plant's normal return on capital, but any gains by the firm in terms of heat production must be deducted from production costs.

Basis of exemption for all projects examined by the Competition Council

Art.14. Subject to the limits and conditions set out in this Regulation, environmental aid will be authorised by the Competition Council for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the proper application of international agreements to which Romania is a party

Chapter V

Overlapping aid from different sources

The aid ceilings granted for the same purpose or for the different purposes

Art.15. – (1) The aid ceilings stipulated in this Regulation are applicable irrespective of whether the aid in question is financed wholly or in part from State resources. Aid authorised under this Regulation may not be combined with other forms of State aid within the meaning of Article 2 (1) of the State aid Law no.143/1999 and if such overlapping produces an aid intensity higher than that laid down in this Regulation.

(2) In the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.

Chapter VI

Final provisions

Conditions to be met for the application of this Regulation

Art. 16. The provisions of this Regulation will be implemented in accordance with the Regulation on the form, content and other details of the state aid notification and with the Regulation on the de minimis rule of State aid which is not covered by the notification obligation, that entered into force through the Order nr.27/2000 by the President of the Competition Council.

State aids falling under this Regulation

Art.17. This Regulation applies to State aids granted for environmental protection, which will be notified after it enters into force. Also, the present regulation applies to State aids which were notified before its entering into force, but the Competition Council decision is subsequent to this date or the Competition Council was not issued a decision yet.

Entering into force

Art.18. This Regulation is adopted through Order by the President of the Competition Council and enters into force after six months as of the date of publishing in the Romanian Official Gazette.